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VIA ELECTRONIC SUBMISSION

March 8, 2022

Senator Julie Kushner
Co-Chair
Labor and Public Employees Committee
Legislative Office Building, Room 3800
Hartford, CT 06106

Representative Robyn Porter
Co-Chair
Labor and Public Employees Committee
Legislative Office Building, Room 3800
Hartford, CT 06106

Re: House Bill No. 5353: An Act Concerning a Fair Work Week Schedule

Dear Sens. Kushner and Rep. Porter:

These comments are submitted on behalf of the American Staffing Association regarding HB 5353, which deals with fair work week schedules. ASA is a trade association that represents temporary and contract staffing agencies in Connecticut and throughout the United States. The temporary staffing industry plays a critical role in Connecticut's economy, employing over 122,000 workers statewide in 2020, thus contributing significantly to the state's economic vitality and growth.

As written, HB 5353 would require a staffing agency—which Connecticut law defines as a "temporary help service" ("THS")—to provide employees with notice of work schedules and changes in schedules, including changes in shifts. The bill also prescribes specific rest periods between shifts. Those requirements may be appropriate in traditional employment relationships, but do not fit temporary staffing arrangements in which staffing agencies often offer employees, generally on short notice, the opportunity to work on more than one short-term job or assignment with different clients in a period, sometimes in a single day. Those are not "shift" changes within the meaning of the bill and the notice and rest period requirements therefore should not apply for the reasons explained below. Finally, the bill also would generally bar businesses from using the employees of a THS unless the business first offers additional work to its existing employees.

As explained below, these provisions are unnecessary and would significantly disrupt Connecticut's staffing industry and potentially deny jobs to thousands of temporary employees. Accordingly, we propose that HB 5353 exclude the temporary employees of a THS from the definition of employee—as Oregon did in its 2017 fair schedule law.

Temporary Help Services Cannot Practicably Comply with the Bill's Notice Mandates

HB 5353 would require a THS, "upon hiring an employee," to provide a written *estimate* of the employee's work schedule, including the average and range of hours the employee can expect to work each week, plus the number, length, and days of their shifts. The employee's *actual* work schedule must be provided no later than the date of the first shift. Thereafter, weekly schedules must be provided 14 days prior to the start of each work week.

A THS cannot provide such information at the time of hire for the simple reason that it is not known at that time. Applicants for temporary work apply by filling out an employment application, including the federal Form I-9, at which time they are technically "hired" and included in the THS database of available workers. In almost every case, however, individuals are not actually assigned to a job until a later date. Only when a THS client submits a request for temporary help and the THS offers the applicant a job, would the THS be able to provide the information required by HB 5353.

Nor can a THS practicably comply with the 14-day notice requirement for weekly schedules after the first shift. Because of the exigencies of a THS client's business, clients often request, change, or cancel temporary assignments—or increase or reduce employee work hours—on short notice. For example, a client's regular employees might report out sick or return unexpectedly; or a client may experience a sudden surge or drop in business forcing a change or cancellation of the assignment; those and other exigent events require prompt assistance. Barring the use of agency employees because advance notice cannot be given in such cases would eliminate many temporary jobs.

Not only are the notice mandates not feasible, they also are unnecessary. Because most staffing assignments are so short, temporary employees rarely experience schedule or shift changes during an assignment that would occasion such notice.

The Bill's Premium Pay Requirement for Violating the Rest Period Rule Would Deny Jobs to Temporary Employees

Moreover, HB 5353 would require that a temporary employee who accepts a new assignment that begins less than ten hours after the end of the previous assignment be compensated at one-and-a-half times their regular rate of pay. As previously noted, such new assignments are not "shifts" within the meaning of the bill and acceptance of such assignments is completely voluntary on the part of the temporary employee. Imposing a financial penalty on staffing agencies may discourage agencies from offering second assignments in a day thus frustrating temporary workers' desire to maximize their earnings.

For example, a college student may work on assignment in a restaurant in the morning, and then go to school in the afternoon. When classes are over for the day, the worker accepts a job with another staffing agency client during the evening. This legislation would require the payment of overtime in such scenario, thereby discouraging the use of temporary workers and depriving them of the extra income they need.

Requirement to First Hire Existing Employees Should Not Apply to Temporary Work

HB 5353 also requires that, before hiring a new employee from a THS or other outside entity, a business must "make every effort" to schedule its existing employees. An exception is made if existing employees lack the qualifications to perform the work and cannot reasonably be trained to do so. But this exception does not go far enough.

Every business should be able, without delay, to obtain the help it needs in exigent circumstances. Many requests for temporary help could not be timely met, or met at all, if the business had to first canvass its workforce to identify individuals who might be willing and able to perform the work. Nor should the "first hire" requirement apply to jobs for which businesses typically use THS employees—e.g., non-core operations such as call centers and data processing involving high employee turnover.

HB 5353 should Exclude Temporary Employees from the Notice, "Rest Between Shifts" and "First Hire" Mandates

To address the unique nature of temporary work, and to protect the jobs of temporary workers, we urge that temporary employees of a THS be excepted from the bill's notice, "rest between shifts" and "first hire" mandate by excluding them from the definition of "employee"—similar to Oregon's exclusion of temporary employees from the notice requirement of its fair schedule law. See ORS 653.412 (2)(b)(C)).

Specifically, we request that Section 1.(1) of HB 5353 be amended to provide as follows:

> (1) "Employee" means any person, except a temporary employee of a "temporary help service" as defined in the General Statutes of Connecticut section 31-129(e), (A) paid on an hourly basis, (B) not exempt from the minimum wage and overtime compensation requirements of the Fair Labor Standards Act of 1938 and the regulations promulgated thereunder, as amended from time to time, (C) suffered or permitted to work by an employer, and (D) employed in an occupation in the mercantile trade, a restaurant occupation or a hospitality occupation. An alleged employer bears the burden of proof that the individual is, under applicable law, an independent contractor rather than an employee of the alleged employer;

Very truly yours,

Toby Malara, Esq.
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American Staffing Association